

IN THE WATER COURT OF THE STATE OF MONTANA
YELLOWSTONE DIVISION
BOX ELDER CREEK BASIN (39E)
PRELIMINARY DECREE

CLAIMANTS: David H. Hanselman; ~~Lorraine H. Carmick;~~
Suzanne Carmack

CASE 39E-0165-P-2022
39E 173817-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above-stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

FINDINGS OF FACT

1. The ownership of claim 39E 173817-00 has been updated. Suzanne Carmick replaces Lorraine H. Carmick as a co-owner of the claim.
2. Claim 39E 173817-00 was decreed with DNRC issue remarks:

THE POINT OF DIVERSION APPEARS TO BE INCORRECT. THE POINT OF DIVERSION APPEARS TO BE IN THE
 SESWSE SEC 34 TWP 3N RGE 81E FALLON COUNTY.
 MEANS OF DIVERSION WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT
 REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN
 AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.
 SOURCE NAME APPEARS INCORRECT. THE SOURCE NAME APPEARS TO BE UNNAMED TRIBUTARY OF
 COAL BANK CREEK, NORTH FORK.

All issue remarks must be addressed.

3. Claim 39E 173320-00 was decreed with the following source name and point of diversion:

Source Name: COAL BANK CREEK

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NESWSE	34	3N	81E	FALLON

Based on information available to the DNRC, it appears the following changes are appropriate to standardize the source name and refine the legal land description to note where the water is released from the dam:

Source Name: ~~COAL BANK CREEK~~ UNNAMED TRIBUTARY OF COAL BANK CREEK, NORTH FORK

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NESWSE SESWSE	34	3N	81E	FALLON

4. Deadlines were set to provide the Claimants and then-potential owner Suzanne Carmick time to agree or disagree with the proposed changes to claim 39E 173817-00. The most recent Order indicated that if nothing were filed by the January 20, 2023 filing deadline, this Master would conclude the Claimants agree with the proposed changes and a Master's Report would be issued recommending the changes be made.

5. On January 11, 2023, Suzanne Carmick expressed by email that she was filing an ownership update and that she agrees with the proposed changes. Nothing was filed by co-owner David H. Hanselman.

PRINCIPLES AND CONCLUSIONS OF LAW

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own water right

claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564.

2. Pursuant to Rule 22, W.R.Adj.R., if a claimant, objector, or intervenor fails to appear at a scheduled conference or hearing or fails to comply with an order issued by the Water Court, the Water Court may issue such orders of sanction with regard thereto as are just.

3. The means of diversion issue remark decreed on claim 39E 173817-00 is a notice-type issue remark. As no objection was filed, no further proceedings are required.

RECOMMENDATIONS

1. Claim 39E 173817-00 should be modified to show the source as an Unnamed Tributary of the North Fork of Coal Bank Creek and the point of diversion and reservoir located in the SESWSE of Section 34, Township 3 North, Range 61 East, Fallon County.

2. The issue remarks should be removed from the claim.

A Post Decree Abstract of Water Right Claim is served with the Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

David H. Hanselman
1844 W. Carpenter Lake Rd.
Eagle River, WI 54521-9408

**Suzanne Carmick
115 Border Rd
Tisbury, MA 02568
(561)707-2128
suziez2@comcast.net**

(Last Order)
Lorraine H. Carmick
3970 West Ridge Meadow Circle
Clemmons, NC 27012

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POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
BOXELDER CREEK
BASIN 39E

Water Right Number: 39E 173817-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: DAVID H HANSELMAN
1844 W-CARPENTER LAKE RD
EAGLE RIVER, WI 54521 9408

SUZANNE K CARMICK
115 BORDER RD
VINEYARD HAVEN, MA 02568

Priority Date: SEPTEMBER 5, 1941

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: UNNAMED TRIBUTARY OF NORTH FORK COAL BANK CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SESWSE	34	3N	61E	FALLON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

***Reservoir:** ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SESWSE	34	3N	61E	FALLON

Diversion to Reservoir: DIVERSION # 1

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
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